

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MERCK EPROVA AG

Plaintiff,

-v.-

Case No. 07 Civ. 5898 (RJS)

GNOSIS S.P.A.

and

GNOSIS BIORESEARCH S.A.

Defendants.

**DECLARATION OF MARKUS RICHTER IN SUPPORT OF PLAINTIFF MERCK
EPROVA AG'S OPPOSITION TO DEFENDANTS' MOTION UNDER FED. R. CIV. P.
12(b)(2) TO DISMISS THE FIRST AMENDED
COMPLAINT FOR LACK OF PERSONAL JURISDICTION**

I, Markus Richter, declare as follows:

1. I am the Head of the Quality Control Department at Merck Eprova AG ("Merck Eprova").
2. All statements contained herein as to Merck Eprova are based upon my personal knowledge.
3. I submit this declaration in support of Plaintiff Merck Eprova AG's Opposition to Defendants' Motion under Fed. R. Civ. P. 12(b)(2) to Dismiss the First Amended Complaint for Lack of Personal Jurisdiction.
4. Merck Eprova provides active pharmaceutical and dietary ingredients to the pharmaceutical and nutritional industry.

5. In particular, Merck Eprova manufactures and sells the dietary ingredient known as L-5-MTHF, the product at issue in this litigation.

6. I obtained from AHD International LLC ("AHD"), the distributor in the United States for Gnosis S.p.A. and Gnosis Bioresearch S.A. (collectively "Gnosis"), a sample of a compound that was alleged by AHD and Gnosis to be pure L-5-MTHF (the "Gnosis Compound").

7. I analyzed the Gnosis Compound and determined that the sample was *not* pure L-5-MTHF, but was instead a diastereoisomeric mixture (1:1) of L-5-MTHF and D-5-MTHF (collectively known as "5-MTHF").

8. Furthermore, my analysis revealed that the Gnosis Compound had certain very specific characteristics. It contains two "degradation products," D-Mefox and L-Mefox, and an unusually high amount of a related compound, Dimethyltetrahydrofolic acid ("DiMTHFA").

9. The combination of the degradation products D-Mefox and L-Mefox in a 5-MTHF compound, along with a high level of DiMTHFA in a very specific ratio, is a unique, identifying characteristic, akin to a fingerprint.

10. In January 2007, I received from ProThera, Inc. ("ProThera") a sample product purportedly containing L-5-MTHF (the "ProThera Product").

11. I analyzed the ProThera Product and determined that the sample, which claimed to contain pure L-5-MTHF, also was mislabeled and instead contained the diastereoisomeric mixture (1:1) of L-5-MTHF and D-5-MTHF.

12. My analysis further revealed that the ProThera Product also contains the two degradation products D-Mefox and L-Mefox and had an unusually high amount of DiMTHFA, in those exact and unique proportions found in the Gnosis Compound.

13. To the best of my knowledge, there are only two other companies, aside from Merck Eprova and Gnosis, that manufacture diastereoisomeric mixtures of 5-MTHF, neither of which sells or distributes diastereoisomeric mixtures of 5-MTHF into the United States.

14. Because the ProThera Product has both forms of 5-MTHF degradation products, namely D-Mefox and L-Mefox, and also shares the same unique proportion of DiMTHFA as the Gnosis Compound, it is my conclusion that the source of the 5-MTHF used by ProThera is the same as the AHD product: Gnosis.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed: February 28 2008



Markus Richter
Head of Quality Control
Merck Eprova AG